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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 LARRY DOUGLAS NIXON,

12 Petitioner,

13 v.

14 ELDON VAIL,

15 Respondent.  
16

Case No. C09-5013 FDB/KLS

REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED  
*IN FORMA PAUPERIS*

**Noted for: February 27, 2009**

17 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
18 636(b)(1) and Local MJR 3 and 4. Petitioner Larry Douglas Nixon is an inmate at the Prairie  
19 Correctional Facility in Appleton, Minnesota. Mr. Nixon filed an application to proceed *in forma*  
20 *pauperis* (Dkt. # 1), but paid the \$5.00 filing fee on January 26, 2009. (Receipt # T-5020). Accordingly,  
21 the Court should deny the application.

22 **DISCUSSION**

23 A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a  
24 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in  
25 denying an application to proceed in forma pauperis. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963),  
26 *cert. denied*, 375 U.S. 845 (1963).

27 On January 5, 2009, the Clerk received Mr. Nixon's application to proceed *in forma pauperis*.  
28 Dkt. # 1. On January 16, 2009, the Clerk advised Mr. Nixon that his filing was deficient because he had

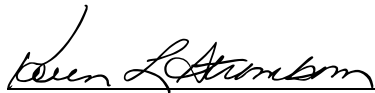
1 failed to provide a written consent and updated copy of his prison trust account statement. Dkt. # 2. On  
2 January 26, 2009, Mr. Nixon paid the \$5.00 filing fee. Because he has paid the filing fee, Mr. Nixon's  
3 application to proceed *in forma pauperis* is moot.

#### 4 CONCLUSION

5 Because Mr. Nixon has paid the filing fee, the undersigned recommends that the Court deny his  
6 application to proceed *in forma pauperis*.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure ("Fed.  
8 R. Civ. P."), Petitioner shall have ten (10) days from service of this Report and Recommendation to file  
9 written objections thereto. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of  
10 those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time  
11 limit imposed by Rule 72(b), the clerk is directed set this matter for consideration on **February 27, 2009**,  
12 as noted in the caption.

13 DATED this 6th day of February, 2009.

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17 Karen L. Strombom  
18 United States Magistrate Judge  
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